IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO.: 5:09-CV-302-FL

ANGELA D. WALTON,	
Plaintiff,	
	MEMORANDUM OF LAW
v.	IN SUPPORT OF PLAINTIFF'S MOTION
NORTH CAROLINA DEPARTMENT OF	FOR LEAVE TO FILE A
AGRICULTURE AND CONSUMER SERVICES,	SECOND AMENDED COMPLAINT
and ROBERT N. BROGDEN, JR.	
Defendants.	

FACTUAL BACKGROUND

Plaintiff Angela D. Walton ("Plaintiff") has contemporaneously filed *Plaintiff's Motion*To Amend Compliant and this Memorandum in accordance with the Fed. R. Civ. P. 15.

ARGUMENT

Fed. R. Civ. P. 15(a) states, in part, that "leave [to amend] shall be freely given when justice so requires." *Lone Star Steakhouse & Saloon Inc. v. Alpha of Virginia, Inc.*, 43 F.3d 922, 940 (4th Cir. 1995). The United States Court of Appeals for the Fourth Circuit has consistently applied this standard when justice so required. *Id.* at 941.

The Supreme Court of the United States has held: "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason-such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by

virtue of allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962).

"The district court must have a 'substantial reason' to deny a request for leave to amend." *Lyn-Lea Travel Corp. v. American Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002). "Where an amendment would do no more than clarify legal theories or make technical corrections, we have consistently held that delay, without a showing of prejudice, is not a sufficient ground for denying the motion." *Harrison v. Rubin*, 174 F.3d 249, 253 (D.C. Cir. 1999). In sum, a requested leave to amend should be "freely given" in the absence of undue delay, bad faith or dilatory motive, undue prejudice, futility, or other compelling reason to deny the proposed amendments.

In the case at bar, there is a complete absence of undue delay, bad faith or dilatory motive, undue prejudice, futility, or other compelling reason to deny the proposed amendments.

Allowing the amendments will more clearly delineate Plaintiff's allegations. The clarification of these issues should ultimately prove helpful to Defendants and this Court. The proposed amendment is timely filed. This *Motion* should be allowed since no compelling reason exists to deny the request.

CONCLUSION

It is respectfully submitted for the reasons delineated above that the Court grant this *Motion* and allow Plaintiff to file the *Second Amended Complaint*.

Respectfully submitted, this the 17th day of November, 2009.

/s/ David G. Schiller

David G. Schiller (N.C. Bar No. 26713) Marvin Schiller (N.C. Bar No. 6838) SCHILLER & SCHILLER, PLLC Professional Park at Pleasant Valley 5540 Munford Road, Suite 101 Raleigh, NC 27612

Telephone: (919) 789-4677 Facsimile: (919) 789-4469 Email: dgschiller@yahoo.com

Counsel for Plaintiff

/s/ Luther D. Starling, Jr.

Luther D. (Lew) Starling, Jr. (NCSB #17603) N. Leo Daughtry (NCSB #1086) Kelly K. Daughtry (NCSB #22010) 405 East Market Street Smithfield, North Carolina 27577 Telephone: (919) 934-5012

Facsimile: (919) 934-9536

Counsel for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S PLAINTIFF'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT on the following counsel via the CM/ECF system:

Ms. Anne J. Brown Special Deputy Attorney General North Carolina Department of Justice Post Office Box 629 Raleigh, NC 27602-0629

Ms. Joy Rhyne Webb Merritt, Flebotte, Wilson, Webb & Caruso, PLLC Post Office Box 2247 Durham, NC 27702

This the 17th day of November, 2009.

/s/ David G. Schiller David G. Schiller